



**The Comptroller General
of the United States**

Washington, D.C. 20548

Curcio

Decision

Matter of: Tidewater Health Evaluation Center, Inc.

File: B-223635.3

Date: November 17, 1986

DIGEST

1. Where a proposal is considered acceptable following initial evaluation, the procuring agency is not obligated to inform the offeror during negotiations of every minor deficiency in the proposal, and protest that agency failed to hold meaningful discussions concerning areas of the proposal that were acceptable, but received less than the maximum score, therefore is without merit.
2. Protest that agency failed to hold meaningful discussions before eliminating proposal from competitive range is without merit where agency sent protester questions that should have led the protester into the areas of its proposal with which the agency was concerned, and protester was given opportunity to revise proposal with responses to these questions.
3. Agency is not obligated to notify protester of proposal deficiencies remaining after protester's initial response to agency's questions; agency need not conduct further discussions with offeror once it determines offeror's proposal has no reasonable chance of being selected for award and thus is outside of revised competitive range.
4. Protest that in evaluating protester's proposal, the agency failed to follow the stated evaluation criteria and evaluated related subfactors inconsistently, is without merit where the criteria applied by the agency were reasonably related to the stated factors and the record shows that scoring under different subfactors in fact is consistent.

DECISION

Tidewater Health Evaluation Center, Inc. (Tidewater) protests the elimination of its proposal from the competitive range under request for proposals (RFP) No. DAMD17-86-R-0009, issued by the Department of the Army. Tidewater alleges that the Army's evaluation of its proposal was unreasonable and

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inconsistent with the evaluation criteria stated in the RFP. Tidewater also asserts that the Army did not hold meaningful discussions with the firm. We deny the protest. 1/

The RFP, issued on January 28, 1986, sought offers to provide cardiovascular screening, diagnosis and treatment for U.S. Army Reserve Personnel. The RFP provided that in determining the awardee, technical factors would be more important than cost, and listed the following major evaluation criteria: (M.1) Personnel; (M.2) Facilities and Equipment; (M.3) Corporate Experience and Background; (M.4) Understanding the Scope of Work and Research Problems and Offeror's Technical Approach; (M.5) Teamwork, Cohesiveness and Management Capability; and (M.6) Cost Controls. Under each factor, sub-factors for evaluation were listed in descending order of importance.

Six firms responded to the RFP. The source selection evaluation board rated the offerors and recommended that five firms, including Tidewater, be included in the competitive range. Written questions concerning the technical and business proposals were sent to each of the five offerors, and after receiving the responses the panel reevaluated and rescored each proposal. As reevaluated, the scores were 94, 92.80, 92.35, 81.30 (Tidewater) and 79.45. The agency then sent additional questions to each offeror. Subsequently, the agency revised the competitive range by eliminating Tidewater and the low-scored offeror based on the view that neither firm had a substantial chance of receiving the award.

MEANINGFUL DISCUSSIONS

Tidewater first protests that the Army failed to hold meaningful discussion with the firm. More specifically, Tidewater complains that, after the initial evaluation, the Army failed to notify the firm of deficiencies in its proposal in a number of areas in which the proposal received less than the maximum score. Tidewater also asserts that after it responded to the questions the Army did raise concerning deficient or unclear areas, the Army did not notify

1/ Tidewater also filed suit in the United States Claims Court, Tidewater Health Evaluation Center, Inc., v. United States, No. 605-86C, seeking injunctive and declaratory relief. We are considering Tidewater's protest in response to the Court's request for our decision. See Intelcom Educational Services, Inc., B-220192.2, Jan. 24, 1986, 86-1 C.P.D. ¶ 83.

Tidewater of the remaining deficiencies in those areas which, in the reevaluation, apparently prevented Tidewater from receiving the maximum score.

Agencies generally must conduct written or oral discussions with all offerors in the competitive range, and this includes advising offerors of deficiencies in their proposals and providing them with the opportunity to submit revised proposals so that they have a chance to satisfy the government's needs. Training and Management Resources, Inc., B-220965, Mar. 12, 1986, 86-1 C.P.D. ¶ 244.

While we have held that this requirement can be satisfied only when discussions are meaningful, we also have stated that this does not mean offerors are entitled to all-encompassing discussions. Rather, agencies are only required to lead offerors into areas of their proposals needing amplification. Technical Services Corp., B-216408.2, June 5, 1985, 85-1 C.P.D. ¶ 640. The actual content and extent of discussions are matters of judgment primarily for determination by the agency involved, and our Office will review the agency's judgments only to determine if they are reasonable. Id. We believe the discussions with Tidewater following the initial evaluation were meaningful under this standard.

The Army presented Tidewater with a list of 24 questions concerning deficiencies in numerous areas of its proposal. Tidewater asserts that it was not notified of deficiencies in its proposal under the following evaluation subfactors for which it received less than a perfect score: (1) Scientific, Technical and Administrative Capabilities; (2) Realistic Estimate of Level of Effort; (3) Safety Aspects of Subjects Undergoing Screening; (4) Principal Investigator; (5) Patient Safety and Emergency Care Facilities; (6) Equipment Planning and Inspection; (7) Comparable Medical Research Protocol; and (8) Teamwork, Cohesiveness and Management Capability.

Our review of the record shows that Tidewater received 85 points (out of 100) during the initial evaluation in each of the first four categories listed above. While the Army did not consider the proposal perfect in these areas, neither did it find any significant problems. We have held that where a proposal is considered to be acceptable and in the competitive range, an agency is not obligated to discuss every aspect of the proposal that receives less than the maximum possible score. Training and Management Resources, Inc., B-220965, supra. Thus, the Army was not obligated to hold negotiations with Tidewater in these areas.

In any case, contrary to Tidewater's position, the questions presented by the Army did encompass these first four areas to some extent. For example, the Scientific, Technical and Administrative Capabilities category clearly was covered by questions number 1 ("What administrative and management experience does the project coordinator have?") and number 7 ("Specifically describe the administrative capabilities of your organization"). Similarly, the Safety Aspects of Subjects Undergoing Screening criterion was addressed in questions 12 ("... What assurances can be provided to demonstrate that individual patient safety will not be compromised as a result of fragmenting the continuity of medical care?") and 13 ("... document what approaches your organization will utilize to guarantee the safety of subjects undergoing screening/treatment.").

We similarly find that the Army's questions covered the last four subfactors noted by Tidewater, each of which received 70 points in the initial evaluation. The questions sent to Tidewater included the following: (1) provide data to document the quality, reliability and adequacy of the equipment to be utilized; (2) indicate where the equipment will be located; (3) document the quality and reputation of the laboratory services/facilities to be provided; (4) specify where phase II screening will take place; (5) explain how individual patient safety will not be compromised by a lack of continuity of medical care if phases II, III and IV will not be conducted at the same location; and (6) provide detailed information on the safety precautions to be used. These questions clearly transmitted Army concerns under the four subfactors. Since Tidewater also was given an opportunity to submit a revised proposal based on these questions, the Army met its obligation to hold meaningful discussions. Ellis & Watts, B-219360, Aug. 20, 1985, 85-2 C.P.D. ¶ 202.

We reject Tidewater's argument that after Tidewater responded to the initial questions, the Army was required to notify the firm of remaining deficiencies in areas where Tidewater did not receive the maximum score in the second evaluation. While there may have been areas in which Tidewater believes its proposal could have been improved with further opportunity for discussion, the Army determined following the reevaluation that, given the quality of the other proposals, Tidewater's proposal could not be improved enough that Tidewater would have a reasonable chance for the award. See Ameriko Maintenance Co., Inc., B-216406, Mar. 1, 1985, 85-1 C.P.D. ¶ 255 (determination of competitive range using relative approach based on array of scores is not objectionable.) Tidewater has cited no specific areas where it believes its proposal was scored incorrectly and has cited no aspects of its proposal that it believes it would be able to

upgrade so as to eliminate the substantial technical difference between Tidewater and the offerors included in the revised competitive range. The Army was not required to conduct even further discussions with Tidewater to improve its proposal enough to include it in the revised competitive range. See Arthur D. Little, Inc., B-213686, Aug. 3, 1984, 84-2 C.P.D. ¶ 149.

DEVIATION FROM STATED EVALUATION CRITERIA

Tidewater next asserts that the Army's evaluation of its proposal was inconsistent with the evaluation criteria stated in the RFP. Specifically, Tidewater takes issue with the downgrading of its proposal on the following grounds: (1) the proposal did not contain a comprehensive listing of equipment; (2) the project coordinator did not have demonstrated experience with the military and would not spend sufficient time on the contract; (3) its principal investigator did not live in the geographic area in which the contract was to be performed; and (4) Tidewater did not provide for weekend testing. Tidewater complains that none of these reasons for downgrading its proposal were requirements of the RFP, and that its proposal therefore was evaluated improperly.

Solicitations must inform all offerors of the basis for proposal evaluation, and the evaluation must, in fact, be based on the factors set forth in the RFP. While agencies are required to identify the major evaluation factors, they are not required to identify the various aspects of each which might be taken into account, provided that such aspects are reasonably related to or encompassed by the stated criteria. RCA Service Co., et al., B-218191, et al., May 22, 1985, 85-1 C.P.D. ¶ 585.

We find that these four deficiencies did relate directly to the stated evaluation criteria. First, evaluation factors M.2(4) and M.2(5) specifically provided for the evaluation of the adequacy of and comprehensive planning for the use of patient safety and emergency care facilities and equipment, and the thoroughness and comprehensiveness of the listing of medical supplies to be furnished. Second, the project coordinator's experience with the military clearly was encompassed by the broad evaluation factor M.1(2), entitled "Qualifications and Experience of the Project Coordinator"; it certainly is reasonable to consider experience with military contracts when considering the award of a contract dealing with military personnel. Third, the evaluation panel was concerned that, because the principal investigator did not live in the area where the contract was to be performed,

he would not be available for emergencies. The panel thus considered this a negative element under factor M.4(2), "Technical and administrative feasibility of proposed course of action." In this regard, section L of the solicitation charges the principal investigator with complete control over the personnel, facilities and equipment allocated to the project. Finally, there is no indication in the record that the Army downgraded Tidewater's proposal based on the amount of time the project coordinator would spend on the project or because Tidewater did not offer weekend testing.

EVALUATION INCONSISTENCIES

Tidewater argues that the Army's evaluation of the firm's proposal was unreasonable on the ground that the proposal received inconsistent scores under what it believes are related evaluation criteria. We do not agree that Tidewater received inconsistent scores.

Tidewater first cites as inconsistent its score of 100 under subfactor "Evidence of offeror's background as a safety conscious contractor, with minimal incidents of a nature that call into question the contractor's sense of responsibility," and its score of only 85 under subfactor "Understanding of, appreciation of, and approach to dealing with the safety aspects of subjects undergoing screening treatment." It is obvious to us, however, that the two separate evaluation criteria evidenced the Army's separate concerns with the safety record of the organization and the safety aspects of the approach the organization proposed to accomplish the current contract objectives. The evaluation board found that Tidewater had been a safety conscious contractor, but that its proposal did not sufficiently address the safety equipment, protocols and procedures that the firm would use in performing the current contract. We thus find the scoring under these criteria consistent.

Tidewater also points to its reevaluation score of 100 for subfactor "Quality, reliability and adequacy of equipment to be utilized under this contract. . ." and its reevaluation score of only 70 for subfactor "Thoroughness and comprehensiveness of listing of medical supplies to be furnished." Again, however, it is obvious that the Army had two specific concerns: one, that the equipment the contractor intended to use was accurate, reliable and of high quality, and two, that the contractor would have available all equipment needed to perform all aspects of the contract and be familiar with other than conventional equipment. We do not find it inherently inconsistent or unreasonable for the Army to find that the equipment listed was reliable and adequate while at

the same time finding that Tidewater did not submit a sufficiently thorough list of equipment.

Accordingly, we have no legal basis on which to object to the Army's evaluation of Tidewater's proposal and the agency's decision to exclude the firm from the competitive range. The protest is denied.

for *Raymond E. Van*
Harry R. Van Cleve
General Counsel